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EXAMINER

MCCORD, PAUL C

ART UNIT

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2615

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/579,414	KORST ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	PAUL MCCORD	2615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 3 objected to because of the following informalities: improper tense: claim states the said buttons each "having" different states, it is presumed that the claim intends to state that the buttons "have" different states. Appropriate correction is required.
2. Claim 4 objected to because of the following informalities: terms of varying degree such as "particularly dislikes" create difficulty in ascertaining the extent necessary to meet the limitation of the stated claim. For the purpose of the art rejection below the claim will be construed to read "...that the specific user dislikes..." Appropriate correction is required.
3. Claims 1, 11, 13 are objected to because of the following informalities: optional nature of claim language: the phrase "adapted to" makes optional the structure or method it is intended to limit. Appropriate correction is required.
4. Claims 11 and 12 are objected to for the following informalities: improper labeling: claims 11 and 12 are marked "original" but display amending marks. For the purpose of the art rejection below the amending marks will be considered as part of the claims, that is, the claims will be considered as if they were marked "amended." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2, 6, 10, 11 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Kosmi (US Patent 7293060.)

7. Regarding claim 1 (original)

Kosmi teaches:

**An audio player apparatus** (Claim 1: an apparatus for providing an electronic disc jockey service to various parties) **comprising input means** (Column 4, lines 23-35:: one or more input devices) **for inputting the presence of at least one user** (Col 9, l. 1-10: a user inputs presence in the form of a login with a predefined passcode that allows access to the disc jockey service) **at a location of said audio player apparatus** (Col 9, l. 120-: user arrives at a location serviced by a content source which regulates transmission of media to a client station and logs in), **and input means** (Col 4, l. 23-35: various input devices allow users to provide upstream feedback to content source) **for audio-preferences** (Col 3, l. 30-35; Col 4, l. 60-67: preferences indicated in the form of upstream feedback provided by users to content source while service is running), **wherein said means are operatively connected to said audio player apparatus** (Col 4, l. 18-42: Figure 3: input devices of wireless and wired form are connected to a client station which is coupled to a content source), **and wherein audio reproduced by said audio player apparatus is adapted to the audio taste of users present at the location of the audio player apparatus** (Col 10, l. 30-63: user preferences in

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the form of requests are presented to the content source which adapts by modifying a playlist based on the request), **as indicated by said input means for presence of users and/or said input means for audio- preferences** (Col 4, l. 18-42: Figure 3: input devices are connected to a client station which is coupled to a content source.)

8. Regarding claim 2 (original)

Kosmi teaches:

**Audio player apparatus according to claim 1, wherein said input means for inputting the presence of at least one user is a set of buttons, wherein each button is dedicated to a specific user or group of users.** (Col 4, l. 18-42: Figure 3: each user or group can have various input device/devices dedicated to that user or group including keyboards and touch sensitive pads (set of buttons) for the purpose of providing upstream communication to the content source)

9. Regarding claim 6 (currently amended)

Kosmi teaches:

**Audio player apparatus according to ~~any of the preceding claims~~ claim 1, wherein said input means for audio-preferences indicate a preferred genre/mood of the audio to be reproduced by said audio player.** (Col 8, l. 45-67: user audio preferences include the type and genre of content to be delivered)

10. Regarding claim 10

Kosmi teaches:

**An Audio player apparatus according to claim 1 wherein said audio player apparatus is comprised in the group of portable audio players, car audio**

- equipment, internet radios, or digital jukebox devices.** The Kosmi player delivers internet radio – live content sources (Col 6, l. 59-67) including radio broadcasts (Col 4, l. 10-15) may be made available to users by the content control device via an internet connection. (Col 4, l. 14-16; Col 6, l. 60-67; Col 7, l. 1-4)
11. Regarding claim 11 – see above rejection of claim 1 and 6, the apparatus teaches the method.
12. Regarding claim 12 – see above rejection of claim 1, the apparatus teaches an appropriate physical computer readable medium suitably encoded with functional descriptive material which when executed causes a processor to perform the recited steps toward the practical application of a final result. (Col 6, l. 13-16: virtual disc jockey may be software based operating on the processor of content control computer)

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kosmi as applied to claim 1 above, and further in view of Vong et al. (US Patent 6917373 hereinafter Vong.)

17. Regarding claim 3 (original)

Kosmi teaches:

**Audio player apparatus according to claim 2**

Kosmi does not teach:

An audio player apparatus according to claim 2 **wherein said buttons each having different states.**

In a related field of endeavor Vong teaches:

A controller for audio playback (see Abstract; Col 2, l 65-67: display unit can function as a user interface for internet radio) that includes buttons within the user interface. Each button can have a different state which can change on activation.

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(Abstract: each button has characteristics associated with viewable states which may change.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the control panel buttons with different states of Vong within the audio player of apparatus of Kosmi. Kosmi and Vong both teach systems delivering audio content to a user. One would have been motivated to include the Vong buttons in the Kosmi player for the purpose of implementing a device control panel with greater capabilities. (Vong: Col 1, l. 34-41)

18. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kosmi as applied to claim 1 above, and further in view of Zamir et al. (US PGPub 2003/0236582 hereinafter Zam.)

19. Regarding claim 7 (currently amended)

Kosmi teaches:

**Audio player apparatus according to ~~claims 1 or 6~~ claim 1,**

Kosmi does not teach:

**An audio player apparatus wherein said audio-preferences comprise volume, bass, treble preferred by the users present.**

In a related field of endeavor Zam teaches:

A method of media file selection for delivery to users based around various metadata encoded by user reactions. Metadata associated with a musical track can be analyzed by a DSP for specifics relevant to the track including the amount of



Bass in any particular track. The amount of bass, or other metadata, can be assigned to a named category i.e. “Heavy bass.” (s. 0214])

Applying the Zam method to the Kosmi devices teaches an audio player apparatus **wherein said audio-preferences comprise volume, bass, treble preferred by the users present.** The Zam system explicitly teaches the analysis of media files for information relevant to the low end of the audio frequency continuum. The DSP can equally well analyze media files for treble information or volume (the representation of apparent energy of the track.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a method for delivering media files based on analytical metadata as taught by Zam within the Kosmi audio player. Kosmi and Zam both teach systems for the delivery of media files. One would have been motivated to include the usage of metadata as disclosed by Zam within the Kosmi player for the purpose of adapting the delivery of media to users based on the reaction of the users to the media.

20. Regarding claim 8 (currently amended)

Kosmi teaches:

**Audio player apparatus according to claim 1,**

Kosmi does not teach:

An audio player **wherein a control means adjusts how strictly the player follows the preferences of the different users.**

In a related field of endeavor Zam teaches:

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An apparatus for the automatic selection of a media for delivery to users based around various metadata encoded by user reactions. The apparatus contains an operating mode wherein items from within the database of media files are selected probabilistically by the apparatus based on previously indicated user reactions to other media files, thereby serving to recommend media files which the user may preferable experience. These recommendations can operate based on a risk factor which represents the degree of risk take in playing items that the user is likely to preferentially experience thereby controlling **how strictly the player follows the preferences of the user or group**. When applied to Kosmi the Zam system functions as an automated Disc Jockey, guiding the delivery media files to users or groups in such a manner as to maximize their potential enjoyment while minimizing the chance that any user or group might be provided media that is to that user or groups distaste. It would have been obvious to one of ordinary skill in the art at the time of the invention to include an apparatus capable of recommending media files as taught by Zam to users of the Kosmi apparatus for the purpose of adapting the delivery of media to users or groups in a manner calculated to maximize the satisfaction and minimize the dissatisfaction of the users or groups.

21. Regarding claim 9 (currently amended)

Kosmi teaches:

**Audio player apparatus according to claim 1.** The Kosmi player includes technology designed to respond to recommendations of songs by users

**Kosmi does not explicitly teach:**

An audio player apparatus **wherein the audio player apparatus comprises recommender technology means for selecting songs to be played.**

In a related field of endeavor Zam teaches:

An apparatus for the automatic selection of a media for delivery to users based around various metadata encoded by user reactions. The apparatus contains **recommender technology** – i.e. an operating mode wherein items from within the database of media files are selected probabilistically by the apparatus based on previously indicated user reactions to other media files, thereby serving to recommend media files which the user may preferably experience and deliver these selected files to the user or group It would have been obvious to one of ordinary skill in the art at the time of the invention to include an apparatus capable of recommending, selecting and delivering media files as taught by Zam to users of the Kosmi apparatus for the purpose of adapting the delivery of media to users or groups in a manner calculated to maximize the satisfaction and minimize the dissatisfaction of the users or groups.

22. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kosmi in view of Vong as applied to claim 3 above, and further in view of Zam.

23. Regarding claim 4 (original)

Kosmi does not teach:

An audio player apparatus **according to claim 3 wherein said states comprise a first state indicating that the specific user is not present, a second state indicating that the specific user is present and instructing the audio player**

**that audio that the specific user dislikes is not played, and a third state indicating that the specific user is present and instructing the audio player that audio that the specific user likes is played.**

In a related field of endeavor Vong teaches:

A controller for audio playback (see Abstract) consisting of a plurality of buttons; each button having different and user changeable states. (Abstract) Vong teaches a HOME button, activation of which can cause several operations including closing applications and logging a logged-in user out. (Col 9, l. 25-46) The buttons of Vong also toggle between actions.

Applying the multi-state buttons of Vong to the Kosmi player teaches:

An audio player apparatus **wherein said states comprise a first state indicating that the specific user is not present** (upon leaving the system a user depresses the HOME button to log out), **a second state indicating that the specific user is present** (the Vong HOME button can be modified to activate the system and log in when pushed once, thereby indicating that a user or group is present and desires media file delivery) **and a third state indicating that the specific user is present and instructing the audio player that audio that the specific user likes is played** (Vong envisions multiple states for the buttons, a first depression can activate the second state, alerting the system to the presence of a user, a second push of the button within a specified time period could indicate that the user is present and desires media file delivery in concert with expressed user or group preferences. The preferences indicate to the content source **both** a desire by the user to not be provided with media which the user or group dislikes as well as

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indicating to the content provider that the user or group wishes to hear media that the user or group likes. A preference indicates an ordering or hierarchy of choices, in such a hierarchy a preference serves as an indication of taste and exists in inverse proportion to the negation of preference or indication of distaste.)

Kosmi in view of Vong do not explicitly teach:

**a second state indicating that the specific user is present AND instructing the audio player that audio that the specific user dislikes is not played,**

In a related field of endeavor Zam teaches:

An apparatus for the automatic selection of a media for delivery to users based around various metadata encoded by user reactions. Zam envisions several methods for gauging these user reactions and includes gather metadata based around various degrees of negative reactions of the user to the delivered content. (s. [0035])

Applying the apparatus of Zam to the Kosmi in view of Vong audio player apparatus teaches an audio player wherein a second state signifies that a user is present and does not wish to have delivered media files to which the user has expressed a degree of negativity toward (dislikes)

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a method for delivering media files based on analytical metadata as taught by Zam within the Kosmi in view of Vong audio player. Kosmi in view of Vong and Zam both teach systems for the delivery of media files. One would have been motivated to include the usage of metadata as disclosed by Zam within the Kosmi in view of Vong player for the purpose of

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adapting the delivery of media to users based on the reaction of the users to the media.

24. Regarding claim 5 (original)

Kosmi in view of Vong teaches:

An audio player apparatus **according to claim 4 wherein the audio player in the second and third state takes into account the preferences of other users that also have indicated their presence by means of the remaining inputting means.** The Kosmi in view of Vong system discloses that a plurality of users or groups can log in to the virtual disc jockey at any one time. Each of these users or groups can communicate presence and preferences upstream to the content source. The preferences of any logged in user or group can affect the playlist of media files delivered through the system as the content source takes the preferences of users or groups into account when comprising a playlist for the delivery of media content.

Kosmi in view of Vong does not explicitly teach:

An audio player apparatus **with a second state according to claim 4.**

Zam teaches:

An apparatus for the automatic selection of a media for delivery to users based around various metadata encoded by user reactions. Zam envisions several methods for gauging these user reactions and includes gather metadata based around various degrees of negative reactions of the user to the delivered content.

(s. [0035])

Applying the apparatus of Zam to the Kosmi in view of Vong audio player apparatus teaches an audio player **according to claim 4 wherein the audio player in the second and third state takes into account the preferences of other users that also have indicated their presence by means of the remaining inputting means.**

### *Conclusion*

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5497185 – discloses a method of collecting data from a TV audience

6041311 – discloses a method for collaborative filtering

6395664 – discloses a method for interactive TV

6438579 – discloses a system for recommending entertainment

6657116 – discloses a music scheduling system

6708176 – discloses an interactive advertising system

6933433 – discloses a playlist with song recommending

6965770 – discloses a system for dynamic content delivery

7003515 – discloses a method of determining similarity between items

7075000 – discloses a method of preference prediction

2002/0040326 – discloses a method for selecting categorized content items

2003/0078840 – discloses an interactive public announcement system

2003/0227478 – discloses a system for group experience of media

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26. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL MCCORD whose telephone number is (571)270-3701. The examiner can normally be reached on M-F 7:30AM - 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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/P. M./

Examiner, Art Unit 2615